

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/493,819 01/28/00 SHIBATA

N. FM 266204

000909  
PILLSBURY WINTHROP LLP  
1600 TYSONS BOULEVARD  
MCLEAN VA 22102

MMC2/0712

EXAMINER

WILLE, D

ART UNIT

PAPER NUMBER

2814

DATE MAILED:

07/12/01

Please find below and/or attached an Office communication concerning this application or proceeding:

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/493,819	SHIBATA, NAOKI
	Examiner Douglas A Wille	Art Unit 2814

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 April 2000.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- 15) Notice of References Cited (PTO-892)
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 18) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 19) Notice of Informal Patent Application (PTO-152)
- 20) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Ohba et al.
3. Ohba et al. show a device (see cover Figure and column 7, line 49 et seq.) with a substrate 10, buffer layers 11, 12, a layer of AlGaInN 15 and a layer of GaInN 16.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmond et al. in view of Schetzina.
3. Edmond et al. show a light emitting diode (see cover Figure and column 4, line 64 et seq.) which includes a substrate 21, a buffer layer 23, GaN layers 26, 27 (column 5, line 46) and an InGaN active layer 25 (column 6, line 10). Edmond et al. discuss (Figure 3 and column 7, line 12) grading between the buffer layer and the double heterostructure but do not discuss grading of the InGaN layer. Schetzina show (Figure 9A) a linear grading layer between GaN and InGaN where the grading produces a low resistance link (column 10, line 60) which improves the device

Art Unit: 2814

efficiency. It would have been obvious to modify the Edmond et al. device to include the graded layer shown by Schetzina to improve the efficiency of the device.

4. Claims 4 - 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohba et al. in view of Duggan.

5. With respect to claim 4, Ohba et al. show the basic structure but do not show graded layers. Duggan et al. show a similar device (see cover Figure and column 7, line 55) and show that adding graded layers between the device layers will reduce dislocations and improve the device efficiency (abstract). It would have been obvious to include the graded layers shown by Duggan in the Ohba et al. device to improve the efficiency.

6. With respect to claims 5 and 6, AlGaN has a wider band gap than InGaN.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A Wille whose telephone number is (703) 308-4949. The examiner can normally be reached on M-F (6:15-3:45).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olik Chaudhuri can be reached on (703) 306-2794. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Art Unit: 2814



Douglas A. Wille  
Patent Examiner

daw

July 10, 2001